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October 27, 2003

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Marlene H Dortch
Secretary
Federal Communications Commission
445 12th Street, S W
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Re *In re Petition of Vonage Holdings Corporation for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211

Dear Ms Dortch

On October 27, 2003, MCI and CompTel submitted their joint comments in the above-referenced proceeding via the Commission's online Electronic Comment Filing System. Enclosed please find a courtesy paper copy for your records

Sincerely,

Mark D Schneider

MDS pb
Enclosure

cc Matthew Brill
Robert Cannon
Michelle Carey
Jeff Carlisle
Kyle Dixon
Jordan Goldstein
Daniel Gonzalez
Christopher Libertelli
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
VONAGE HOLDINGS CORPORATION	)	
Petition for Declaratory Ruling	)	**WC Docket No. 03-211**
Concerning an Order of the	)	
Minnesota Public Utilities Commission	)	

JOINT COMMENTS OF MCI & COMPTEL

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JOINT COMMENTS OF MCI & COMPTEL

WorldCom, Inc d/b/a MCI ("MCI") and the COMPETITIVE TELECOMMUNICATIONS ASSOCIATION ("CompTel") hereby submit their joint comments to Vonage Holding Corporation's ("Vonage") *Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission* ("Petition") in the above-captioned proceeding

MCI has a direct and immediate stake in the outcome of this proceeding MCI owns, operates, monitors, and maintains one of the largest IP communications networks in the world As an industry leader in the Internet sector, MCI has been active with respect to the development and implementation of Voice over Internet Protocol ("VoIP") and other IP-based services in the United States and beyond

CompTel is equally interested in the outcome of this proceeding CompTel is the leading association representing competitive telecommunications companies in virtually every sector of the marketplace, including competitive local exchange carriers and Internet backbone providers

For all of the reasons outlined herein, MCI and CompTel strongly support Vonage's Petition that is before the Commission in this proceeding

I. INTRODUCTION AND EXECUTIVE SUMMARY

Vonage instituted this proceeding to address a September 11, 2003 Minnesota Public Utilities Commission ("MPUC") decision that held that Vonage's VoIP service constituted "telephone service" under Minnesota state law,[1] and imposed upon Vonage the full gamut of state regulations that are generally applicable to local phone companies.[2] But on October 16, 2003, the United States District Court for the District of Minnesota reversed that decision, agreeing with Vonage's position that its VoIP service was an unregulated "information service" under both the Telecommunications Act of 1996 (the "Act")[3] and established Commission precedent, which pre-empt all contrary state laws.[4] The Court issued a permanent injunction against the enforcement by the MPUC of its September 11 order.

While it might appear that there is less compelling need for prompt Commission action in the wake of the district court's decision, a number of state commissions have actively taken steps since September 11 to regulate VoIP services within their jurisdiction (e.g., California and Wisconsin) or have opened state proceedings in response to complaints brought against VoIP providers (e.g., Oregon and Washington).[5] Other state commissions (e.g., Missouri) have indicated that they may open proceedings in the near future to address the regulation of VoIP

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1 *See* Minn. Stat. § 237.16, subd. 1(b), and § 237.74, subd. 12, Minn. R. 7812.0200, subp. 1.

2 *In re the Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp. Regarding Lack of Authority to Operate in Minnesota*, Docket No. P-6214/C-03-108 (Minn. Pub. Utils. Comm'n, Sept. 11, 2003) ("MPUC Decision").

3 Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996), codified at 47 U.S.C. § 151 *et seq.*

4 *See, e.g., Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (recognizing that "Congress acted to keep government regulation of the Internet to a minimum.").

5 *See, e.g., Federal Judge Rules That Vonage Provides 'Information Service'*, TR Daily, Oct. 16, 2003.

services under their respective state's laws.[6] Given this increased level of state involvement, MCI and CompTel believe that it would be preferable for the Commission to address Vonage's Petition as soon as possible. The MPUC decision, even though enjoined, has established a bad precedent for other state commissions, many of which now appear to be moving quickly in the wrong direction. Accordingly, the Commission should move expeditiously to address Vonage's Petition, thereby making it clear that state authority to regulate common carriers does not extend to VoIP providers.

In seeking a declaratory ruling that its VoIP service constitutes an "information service" under the statutory framework established by Congress in the Act, Vonage has squarely presented the Commission with an opportunity to promote and accelerate the continued evolution of communications in America. Properly characterized as an "information service" under the Act – a result that is fully consistent with long-standing Commission precedent, established regulations, and the district court's decision addressing the same issue – Vonage's VoIP service should not be subject to federal or state regulations that are otherwise applicable to traditional telephone services.

In reaching this conclusion, the Commission also should reiterate and expand upon its established "layered" regulatory framework that draws important distinctions between unregulated application and regulated bottleneck access technologies. This framework has been a conceptual underpinning of the nation's telecommunications law for more than twenty years, ever since the Commission first announced the "basic" versus "enhanced" dichotomy in the *Computer II* inquiry in 1980.[7] Moreover, this "layers" paradigm was later codified in the Act,

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[6] *See, e.g., Missouri PSC Considers Opening Proceeding On VoIP*, TR Daily, Oct. 20, 2003.

[7] *See, e.g., In re Amendment of Section 64.702 of the Commission's Rules and Regulations*

through the mutually exclusive legal definitions of "telecommunications services" and "information services," which are central to the instant proceeding By reinforcing the separate treatment of "enhanced" applications that transit over "basic" access lines, the Commission will encourage the broader growth of VoIP and other Internet Protocol ("IP") based services – many of which have yet to even be conceived – in a world where regulated monopolies or duopolies still dominate and control the underlying bottleneck access facilities

The Commission should take steps to clarify how VoIP services, and other IP applications offered in an unregulated, competitive marketplace, properly relate to the current national telecommunications infrastructure and regulatory framework To that end, the Commission should issue a Notice of Inquiry and launch a series of workshops and technical reviews to identify those core consumer and national infrastructure protection issues that may be impacted by the future growth of VoIP services, including 911 and other emergency services, continuity of operations, law enforcement, and national security considerations Additionally, the Commission should proceed promptly with its review of the current intercarrier compensation system to develop a rational system of cost-based charges that does not impose disparate charges for functionally similar uses of the local exchange network At the very least, it should not extend the current irrational access charge system on VoIP and other nascent Internet-based applications

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(Second Computer Inquiry), 77 F C C 2d 394, ¶ 5 (1980) (Final Decision) ("*Computer II*").

II. THE COMMISSION SHOULD FOLLOW THE MINNESOTA DISTRICT COURT'S RECENT *VONAGE* DECISION

The Minnesota District Court's decision in *Vonage Holdings Corporation v Minnesota Public Utilities Commission*[8] lays out a compelling statutory and regulatory analysis that resolves many of the core issues raised by Vonage in the instant Petition The Commission should follow and adopt the district court's decision, both out of deference to the Article III branch's primary role as interpreter of federal statutes[9] and as a matter of sound public policy that comports with the Commission's own established precedent

In its decision, the district court concluded that, through the definitions and other provisions contained in the Act, Congress intentionally distinguished as a legal matter between "telecommunications services," which are regulated, and "information services," which are to be left unregulated [10] The court closely examined Vonage's VoIP service, and concluded that it

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[8] No 03-5287, 2003 U S Dist LEXIS 18451 (D Minn Oct 16, 2003) (Davis , J)

[9] *See Brand X Internet Services v FCC*, No 02-70518, 2003 U S App LEXIS 20306, at *28 (9th Cir Oct 6, 2003) (noting that, at least in the 9th Circuit, a prior judicial statutory interpretation may be disregarded in favor of subsequent agency interpretation "only where the precedent constituted deferential review of" the agency's decision-making under *Chevron*, and where the statute is susceptible of multiple reasonable interpretations) (citation omitted), *United States v Mead Corp* , 533 U S 218, 248-49 (2001) (Scalia, J., dissenting) ("I know of no case, in the entire history of the federal courts, in which we have allowed a judicial interpretation of a statute to be set aside by an agency – or have allowed a lower court to render an interpretation of a statute subject to correction by an agency ")

[10] The Act defines "telecommunications service" as the "offering of telecommunications for a fee directly to the public regardless of the facilities used." 47 U S C § 153(46) In turn, "telecommunications" is the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received " *Id* § 153(43) In contrast, an "information service" is defined as the offering of a capability "for generating, acquiring, storing, transforming, proceeding, retrieving, utilizing, or making available information via telecommunications . " *Id.* § 153(20) *See also Brand X*, 2003 U S App LEXIS 20306, at *11 (the distinction made in the Act "tracked a series of prior administrative decisions by the FCC"), *MCI Telecommunications Corp v Sprint-Florida, Inc* , 139 F Supp 2d 1342, 1346 (N D Fla

constituted "information services" under the Act By definition, Vonage *uses* telecommunications as part of its VoIP service, but does not itself offer "telecommunications" for a fee directly to the public Rather, Vonage provides "enhanced" applications functionality that rides over underlying "basic" telecommunications, which in turn are separately provided as one of the components of the cable or DSL provider's Internet access solution The district court also considered the Commission's applicable regulations and established precedent, and concluded that the Commission already has adopted an identical view of the Act's treatment of "information services" Because Congress intended to leave the Internet and "information services" unregulated, Minnesota's specific attempt to regulate Vonage's VoIP service as a "telephone service" conflicted with that federal intent, and therefore was pre-empted The district court went on to further conclude that Congress' refusal to apply Title II of the Communications Act to "enhanced" services demonstrated its intent to occupy the entire field of regulation of "information services"

Specifically, in granting Vonage's motion for an injunction against the MPUC, the district court rendered the following significant conclusions, each of which is sound and supported by the Act, as well as Commission and judicial precedent:

- "The Court concludes that Vonage is an information service provider" (2003 U S Dist LEXIS 18451, at *2)
- "In its role as an interpreter of legislative intent, the Court applies federal law demonstrating Congress' desire that information services such as those provided by Vonage must not be regulated by state law " (*Id*)

2001) (noting that the Commission previously has concluded that the two categories are mutually exclusive)

- Congress "has spoken with unmistakable clarity" against the regulation of the Internet and Internet-related services (*Id* at *11, citing 47 U S C § 230(b))
- The Commission's history of regulatory action in this area since 1980 consistently has distinguished between "basic services" (telecommunication services) and "enhanced services" (information services), and the Commission's assessment comports with the district court's parallel interpretation of congressional intent (*Id* at *11-*15, citing 47 C F R § 64 702(a)) [11]
- Congress has expressly directed that "enhanced services are not to be regulated under Title II of the Telecommunications Act" (*Id* at *15) (footnote omitted)
- "Vonage's activities fit within the definition of information services. Vonage *uses* telecommunications services, rather than provides them" (*Id* at *17) (emphasis in original) [12]

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[11] This federal regulation is directly on point to the instant proceeding 47 C F R § 64 702(a) provides that an "enhanced service" is a "service, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information Enhanced services are not regulated under Title II of the Act." It is beyond reasonable debate that Vonage's VoIP service is a computer processing application that is offered over third-party carriers' access facilities

[12] VoIP service can involve three different modalities In computer-to-computer mode, VoIP end users can communicate directly with other VoIP end users over the Internet, without any use of the PSTN In computer-to-phone mode, VoIP end users can communicate with traditional "black phone" end users through a combination of the Internet and the PSTN Finally, in phone-to-phone mode, VoIP technology is used to transmit voice communications over metropolitan and/or backbone Internet networks, but both end users are connected to the PSTN and use traditional "black phone" equipment Vonage's VoIP service that is the subject of the instant Petition implicates only the first two modalities The Commission also has before it a separate petition by AT&T seeking a declaratory ruling on the third modality, which MCI similarly supports *See In re AT&T Petition for Declaratory Ruling that AT&T's*

- In applying the Commission's tentative factors for phone-to-phone IP telephony, as articulated in the Commission's *1998 Report to Congress*,[13] "it is clear that Vonage does not provide phone-to-phone IP telephony service Vonage's services do not meet the second and fourth requirements" – namely, that different CPE is required[14] and there is a net protocol change (*Id* at *19-*20)
- The Commission's "layers" framework for distinguishing between application and access technologies, such that "the architecture of information services would be built on top of existing telecommunications services infrastructure," is fully consistent with the language and intent of the Act Therefore, "'we see no need to regulate the enhanced functionalities that can be built on top of those [telecommunications] facilities Limiting carrier regulation to those companies that provide the underlying transport ensures that regulation is minimized '" (*Id* at *23, quoting the *1998 Report to Congress*, ¶ 95)
- "Short of explicit statutory language, the Court can find no stronger guidance for

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Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket 02-361 (F C C filed Oct 18, 2002)

[13] *In re Federal-State Joint Board on Universal Service*, CC Docket No 96-45, 13 F C C R 11501, ¶¶ 83-93 (1998) The Commission's tentative factors for phone-to-phone IP telephony include whether the service (1) holds itself out as providing voice telephony, (2) does not require the use of different customer premise equipment ("CPE") from that necessary to place an ordinary touch-tone call over the PSTN, (3) allows the end user to call phone numbers assigned in accordance with the North American Numbering Plan ("NANP"), and (4) transmits customer information "without net change in form or content " *Id* ¶ 88

[14] This point may have confused the MPUC, as it noted that "[w]ith the Vonage service the customer uses an ordinary touch-tone phone to make calls and carry on conversations " (MPUC Decision, at 8) But in reality, the use of a traditional "black phone" handset that plugs into Vonage's "converter box" computing device is simple mimicry, designed only to make usage of the VoIP service more familiar and comfortable to end users

determining that Vonage's service is an information service, as defined by Congress and interpreted by the FCC " (*Id* at *24)

- Because the MPUC is attempting to regulate Vonage's "information service," against the contrary expression of Congress, federal "pre-emption is necessary" to eliminate the conflict with state laws (*Id* at *11, *25-*26, citing *Louisiana Pub Serv Comm'n v FCC*, 476 U S 355 (1986)) [15]
- "VoIP services necessarily are information services, and state regulation over VoIP services is not permissible because of the recognizable congressional intent to leave the Internet and information services largely unregulated " (*Id* at *27)
- "What Vonage provides is essentially the enhanced functionality on top of the underlying network, which the FCC has explained should be left alone." (*Id* at *30)

The Commission should act consistently with the court's rulings, as they fully square with both the Act and the Commission's established precedents (upon which both the courts and industry have greatly relied) Any contrary outcome would be arbitrary, capricious, and inconsistent with law

[15] In *Louisiana Public Service Commission v FCC*, the Supreme Court identified six conditions under which the federal pre-emption of state laws is appropriate pursuant to the Supremacy Clause of the Constitution (1) Congress enacts a federal statute that expresses its clear intent to pre-empt state law, (2) there is a conflict between federal and state law, (3) compliance with both federal and state law is impossible, (4) federal law contains an implicit barrier to state regulation, (5) comprehensive congressional legislation occupies the entire field of regulation, or (6) state law is an obstacle to the accomplishment and execution of the full objectives of Congress Additionally, "a federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation " 476 U S 355, 368-69 (1986)

III. THE *VONAGE* DECISION IS CONSISTENT WITH COMMISSION POLICY ON "INFORMATION SERVICES"

The Commission's distinction between regulated bottleneck telecommunications services and deregulated applications that ride over those telecommunications paths that was endorsed by the Minnesota court was established in the *Computer Inquiry* cases over twenty years ago, and then powerfully reinforced by Congress in 1996 in the Act This distinction is soundly based on deregulatory principles, which directly led to the growth of the Internet itself The Commission should reinforce those principles here The Commission correctly understood then that there is no need to regulate as common carriage those applications that ride on telecommunications networks, so long as the underlying networks themselves remain open to all applications While the regulation of bottleneck network facilities is necessary to assure this open access, one resulting benefit from such regulation is that the free market is left to manage the development of applications that make use of such telecommunications networks

This distinction was at the heart of Congress' decision to define "telecommunications services" and "information services" as mutually exclusive legal and regulatory categories in the Act It also furthers Congress' desire to promote a "pro-competitive, de-regulatory national policy framework" designed to promote the "deployment of advanced telecommunications and information technologies to all Americans" through open competition [16] And it was most recently implemented by the Ninth Circuit in the *Brand X* case [17] There, in the context of

[16] H R Conf Rep No 104-458, at 113 (1996)

[17] *Brand X*, 2003 U S App LEXIS 20306, at *11 (Act "maintained significant common carrier obligations on providers of 'telecommunications services' but left providers of 'information services' subject to much less stringent regulation ")

reviewing the Commission's recent *Cable Modem Order*,[18] the court reaffirmed an earlier holding in *AT&T Corp v City of Portland*[19] that cable modem service consists of "two elements a 'pipeline' (cable broadband instead of telephone lines), and the Internet service transmitted through that pipeline" The court thus applied the Commission's "layers" methodology to conclude that the access element of the cable modem service should be regulated as a "telecommunications service," but that the applications (ISP) element of the cable modem service was properly left unregulated as an "information service "[20]

As the district court in Minnesota understood, Vonage's VoIP service is simply an application that rides over bottleneck broadband networks As long as those networks remain open to all users, the Commission's standing policy is that such applications are to be left unregulated, and any state law that would purport to regulate them is pre-empted

By fostering this "layers" approach, the Commission does not undercut other important telecommunications policy objectives, such as universal service, competition, or network unbundling Because "enhanced" Internet-based applications, including VoIP, by definition require an underlying "basic" access and transport component, the Commission always will have the opportunity to address such policy issues through the appropriate regulation of the physical access layer

Indeed, the Commission should be careful not to mis-apply access layer rules to the applications layer, as those rules are based on concepts, such as fixed geography, that often are

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[18] *See In re Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, 17 F C C R 4798 (2002) ("*Cable Modem Order*").

[19] 216 F 3d 871 (9th Cir 2000) (reviewing open access conditions imposed by Portland on the AT&T/TCI merger)

[20] *Brand X*, 2003 U S App LEXIS 20306, at *22-*25, *33 (reiterating that cable modem service is part "telecommunications service" and part "information service")

not relevant or determinable in the Internet arena VoIP services offer just one example of the difficulty of imposing such legacy rules, which were designed for copper wires in the ground, on IP applications that simultaneously reside on many computers and lack any obvious geographic definition That is why, as Vonage observes in its Petition, it makes no sense to describe any part of its services as local to Minnesota or to any other state Because access concepts are fuzzy at the applications layer, traditional "end point"-based notions will not only be unnecessary as a matter of policy, but virtually impossible to apply in practice

Ironically, the open Internet is threatened not only by certain states, such as Minnesota, that seek to assert common carriage jurisdiction over IP-based applications, but also from this Commission itself, which has proposed to eliminate the very regulation of bottleneck broadband telecommunications facilities that makes the deregulated Internet possible. In its ill-conceived *Broadband Framework* proceeding,[21] the Commission proposes to abandon the deregulatory *Computer II* regime (against the express intent of Congress, as recently highlighted by the *Brand X* court), so that monopoly owners of bottleneck access facilities can restrict the use of the nation's telecommunications networks to only those particular applications, services, and devices that they choose to allow Under such a stunted regime, Vonage would face not merely the threat of unnecessary common carriage regulation by the states, but limitations or outright denial of access by the cable and Bell monopolies that control the underlying facilities Vonage's service needs in order to operate Such an environment will suffocate VoIP and other IP applications, and severely damage the vibrancy and innovation of the Internet itself

[21] *See In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 17 F C C R 3019 (2002) ("*Broadband Framework*")

For these reasons, which are explained in more detail in MCI's submissions in the *Broadband Framework* docket, the Commission should make clear in response to Vonage's Petition that the *Computer II* framework continues to apply here, and that the contrary tentative conclusions proposed in the *Broadband Framework* proceeding will not be adopted as Commission policy

IV. THE BROKEN INTERCARRIER COMPENSATION SYSTEM SHOULD NOT APPLY TO THE INTERNET

One reason that regulators may seek to subject Vonage's VoIP service to state jurisdiction is a desire to subject VoIP providers to the same intercarrier compensation rules that apply to traditional voice carriers Even if such a result would be otherwise lawful – which it is not such a policy justification would have it exactly backwards The current intercarrier compensation regime provides for widely varying compensation to the local carrier, depending upon whether the local network is used to originate or terminate local, interstate, intrastate, or Internet-based calls It is a compensation system that is widely acknowledged to be in need of radical reform Indeed, the Commission's long-standing refusal to subject enhanced service providers to the access charge regime was based on its understanding that the regime had become so irrational, such that imposing the regime on nascent IP-based services risked deterring the development of the Internet itself

That being so, to the extent that regulators may have a valid concern that it is anomalous to subject traditional voice traffic, but not VoIP traffic, to access charges, the correct response is to reform the access charge regime for all traffic, and not to extend the current bloated and irrational regime to VoIP services And to the extent that VoIP services put competitive pressure on the existing access charge regime, such pressure would constitute a positive development, and

not a negative one Only through the introduction and success of new applications, such as VoIP, will all relevant parties be brought together to reform the current regime In sum, the correct response to such concerns is to reform the intercarrier compensation system, not to extend obviously broken rules to VoIP services [22]

V. THE COMMISSION SHOULD ISSUE A NOTICE OF INQUIRY TO IDENTIFY CORE CONSUMER AND NATIONAL INFRASTRUCTURE PROTECTIONS

While the Minnesota regulators expressed appropriate consumer welfare concerns about the operation of E911 and similar services, their approach to dealing with those concerns unfortunately was off base The MPUC correctly noted that VoIP services do not interact with existing E911 facilities in the same manner as traditional voice telephony services But just as with intercarrier compensation, the proper answer is not to impose an antiquated system on new technologies Rather, new 911-type services should be developed and fostered to take full advantage of the advanced features and functions that IP-based applications can provide For while VoIP services, by their nature, are not geographically fixed in a way that makes them susceptible to current E911 systems, they hold out the prospect for innovative, interactive

[22] Until such time that the Commission reforms the intercarrier system, to the extent (but only to the extent) that VoIP services utilize the existing public switched telephone network ("PSTN") for the termination of computer-to-phone communications, the jurisdictional treatment of the PSTN segment of such communications should be governed by the current intercarrier regime, just as phone calls placed *to* Vonage end users and dial-up ISPs are handled today The relevant end points for such an analysis are: (a) the Vonage-leased access circuit that connects its IP gateway to the PSTN (*i e* , an ILEC, CLEC, or IXC circuit switch), and (b) the access circuit leased by the "black phone" end user that connects its premises to the applicable local exchange carrier. Thus, if locations (a) and (b) are in the same local calling area, then the PSTN portion of the call is properly treated as a local call If (a) and (b) are within the same state, but not in the same local calling area, then intrastate access charges would apply And if (a) and (b) are in different states, then interstate access charges would apply

services that make better use of IP functionalities The solution is not to saddle new technologies with old rules, but to allow the unfettered development of new services that offer greater benefits to consumers

Nor is there any reason to adopt an unthinking assumption that regulation is necessary to promote these new services Instead, in conjunction with the states that have developed expertise in 911-type services, the Commission should first gather information from industry and government technical experts Through workshops and technical reviews, the cooperative engagement of industry and government will best facilitate the illumination of the key issues and potential solutions with respect to VoIP services, consistent with applicable laws and the operational requirements of an effective national communications infrastructure

Such Commission-sponsored workshops should address the impact of VoIP services on 911 and other emergency services (taking into consideration the geographic uncertainties of VoIP users), and also on law enforcement and national security (taking into consideration that CALEA[23] and other requirements already apply to the underlying telecommunications infrastructure over which VoIP communications transit) Through such a constructive dialogue, there is every reason to believe that innovative features and capabilities will be achievable through VoIP services, which can both enhance the end users' communications experience and improve the nation's communications infrastructure

VI. CONCLUSION

For the reasons stated herein, MCI recommends that the Commission grant Vonage's Petition, specifically finding that (a) Vonage's VoIP service is an "information service" within

[23] *Communications Assistance for Law Enforcement Act*, Pub L No 103-414, 108 Stat 4279 (Oct 25, 1994) ("CALEA")

the meaning of the Act, as recently interpreted by the Minnesota District Court, (b) any state laws seeking to regulate Vonage's VoIP service are pre-empted as a matter of federal law, and (c) the existing jurisdictional rules for access charges apply to the extent (but only to the extent) that terminating VoIP communications use the PSTN in the same manner that they apply today for calls placed *to* VoIP end users and dial-up ISPs Furthermore, the Commission should issue a Notice of Inquiry to launch an important dialogue between industry and government to determine how best to achieve an appropriate set of consumer and national infrastructure protections as the usage of VoIP services expands in the future

Respectfully submitted,

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October 27, 2003